

82-1125

FILED  
DEC 27 1982

ALEXANDER L. STEVENS,  
CLERK

NO. \_\_\_\_\_

IN THE  
SUPREME COURT OF THE UNITED STATES  
OCTOBER TERM, 1982

JONATHAN L. HAAS,  
Petitioner,  
v.  
EDGAR HASH and ELAINE HASH,  
Respondents.

Petition for a Writ of Certiorari  
to the Court of Appeals of Arizona

Jonathan L. Haas  
In Propria Persona  
P.O.Box 7461  
Phoenix, Arizona 85011  
602-277-6001

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Division 1  
Court of Appeals  
State of Arizona  
Filed JUL 27 1982

Glen D. Clark, Clerk  
By /s/

In The  
Court of Appeals  
State of Arizona  
Division One

JONATHAN L. HAAS,	)	1 CA-CIV 5559
	)	
Plaintiff-Appellant,	)	
	)	
v.	)	Department A
	)	
EDGAR HASH and ELAINE HASH,	)	
husband and wife, WANDA M.	)	MEMORANDUM
YATES, Executrix of the	)	DECISION
Estate of Flora Holman,	)	(Not for publi-
deceased,	)	cation-Rule 28,
	)	Arizona Rules
Defendants-Appellees.)	)	of Civil
	)	Appellate
	)	Procedure)

An Appeal from the Superior Court of Maricopa  
County

Cause No. C-402225

The Honorable Stanley Z. Goodfarb, Judge

AFFIRMED

---

Jonathan L. Haas  
In Propria Persona

Phoenix

Jennings, Strouss & Salmon  
By W. Michael Flood and John A. Micheael

Attorneys for Defendants-Appellees

Phoenix

---

CORCORAN, Judge

The primary issue on this appeal is whether a civil action terminated pursuant to negotiation, agreement and stipulation of the parties constitutes a "favorable termination" as is necessary for maintenance of an action for malicious prosecution.<sup>1</sup> We hold that it does not and affirm the summary judgment in favor of the defendants-appellees.

On January 14, 1980 appellant Jonathan L. Haas filed a malicious prosecution action against appellees

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1. Arizona has recognized an action for malicious prosecution where the "prosecution" is a civil proceeding rather than a criminal prosecution. See Bird v. Rothman, 128 Ariz. 599, 627 P.2d 1097 (App. 1981) cert. denied 102 S.Ct. 327 (1981); Carroll v. Kalar, 112 Ariz. 595, 545 P.2d 411 (1976). The Restatement (Second) of Torts § 674 (1977) describes tort liability for the initiation or continuation of a civil proceeding without probable cause for a primary purpose other than securing adjudication of the claim, which terminates in favor of the defendant as an action for "wrongful use of civil proceedings."

Edgar and Elaine Hash, husband and wife, and Wanda Yates, as executrix of the estate of Flora Holman.<sup>2</sup> In the complaint Haas alleged that in a preceding action, Edgar Hash, an attorney, brought a third-party action against appellant Haas for fraud in Maricopa County Cause No. C-349188 on behalf of Wanda Yates, as the executrix of the estate of Flora Holman.

Appellant further alleged that summary judgment had been entered on January 9, 1980 in favor of Haas in the fraud action; that the fraud action had been brought by attorney Hash maliciously and without probable cause; and that as a result of the fraud action Haas had suffered injury to his business and reputation.

On May 29, 1980 the trial court took under advisement cross-motions for summary judgment filed by both parties in the malicious prosecution action. Appellees Hash sought summary judgment on the basis that there had

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2. The record does not contain any affidavit of service on Wanda Yates and she is not a party to this appeal.

been no "favorable termination" for Haas in the prior proceeding because it had been terminated by a settlement agreement. The trial court considered the pleadings, the deposition of defendant Hash and the record in Maricopa County Cause No. C-349188 and on June 9, 1980 granted summary judgment in favor of defendants Hash. This appeal followed.

One of the essential elements of a claim for malicious prosecution is that the prior proceeding be terminated in favor of the plaintiff in the malicious prosecution action. Cullison v. City of Peoria, 120 Ariz. 165, 584 P.2d 1156 (1978); Nataros v. Superior Court, 113 Ariz. 498, 557 P.2d 1055 (1976). If the plaintiff in an action for malicious prosecution fails to establish the essential element of a "favorable termination" of the prior proceedings the defendant is entitled to judgment as a matter of law. Hansen v. Stoll, 130 Ariz. 454, 636 P.2d 1236 (App. 1981); Bearup v. Bearup, 122 Ariz. 509, 596 P.2d 35 (App. 1979).

Whether a stipulated judgment in a civil proceeding may be deemed a "favorable termination" for purposes of a subsequent malicious prosecution action has not been directly addressed in Arizona case law. Other jurisdictions, however, have held that where the prior proceedings terminate as a result of voluntary negotiation, settlement, or consent of the parties, there has been no such "favorable termination." See, e.g., Weaver v. Superior Court, 95 Cal.App.3d 166, 156 Cal.Rptr. 745 (1979); Cline v. Flagler Sales Corp., 207 So.2d 709 (Fla.App. 1968); Executive Commercial Services, Ltd. v. Dasalakis, 74 Ill.App.3d 760, 393 N.E.2d 1365 (1979); Miller v. Jamaica Savings Bank, 50 A.D.2d 865, 377 N.Y.S.2d 89 (1975); Tower Special Facilities, Inc. v. Investment Club, Inc., 104 Wis.2d 221, 311 N.W.2d 225 (App.1981). See also Restatement (Second) of Torts § 660(a) (1977); W. Prosser, Law of Torts § 120 at 853-54 (4th ed. 1971).

The rationale for disallowing termination

pursuant to settlement as a "favorable termination" for purposes of a malicious prosecution action has been stated as follows:

A dismissal resulting from negotiations, settlement, or consent is generally not deemed a favorable termination of the proceedings. ... In such a case the dismissal reflects ambiguously on the merits of the action as it results from the joint action of the parties, thus leaving open the question of defendant's guilt or innocence.

Minasian v. Sapse, 80 Cal.App.3d 823, 827, 145 Cal.Rptr. 829, 832 n. 4 (1978)

The reason for this rule is that where the termination of the case is brought about by a compromise or settlement between the parties, understandingly entered into, it is such an admission that there was probable cause that the plaintiff cannot afterwards retract it and try the question, which by settling he waived.

Tower Special Facilities, Inc. v. Investment Club, 104 Wis.2d at 228, 311 N.W.2d at 229 (quoting Lechner v. Ebenreiter, 235 Wis. 244, 252, 292 N.W. 913, 916-917 (1940)).

We find these cases persuasive and consistent with this court's decision in Bearup v. Bearup, supra, in which we recognized the principle that where a plaintiff in a malicious prosecution action consented to a

termination of a prior criminal action, leaving open the question of his guilt or innocence, there did not exist the essential element of a "favorable termination" of the prior action to permit a subsequent malicious prosecution action. In Bearup, this court stated:

We agree that as the prosecution was dismissed because of the pending civil litigation, appellee failed to show that the dismissal was in his favor. ... By consenting to a termination which left open the question of his guilt, appellee failed to obtain a favorable termination. He therefore cannot take advantage of it in a tort action for malicious prosecution. W. Prosser, Law of Torts, § 118 at 840 (4th ed. 1971).

122 Ariz. at 510, 596 P.2d at 36.

Although "summary judgment" was entered in favor of appellant in the fraud action, our inquiry does not end here. As stated by the Indiana Court of Appeals in Wong v. Tabor, 422 N.E.2d. 1279 (Ind.App. 1981),

Entry of summary judgment in favor of a prior defendant clearly constitutes termination in his favor. We recognize, however, that in reality judgment may be entered in favor of a party for a variety of reasons. We may not ignore the context in which the proceedings were terminated. If entry of summary judgment was merely the formal means of securing the parties' settlement benefits, the judgment

cannot form the basis for a malicious prosecution action.

The threshold inquiry thus becomes whether the prior suit ... was in fact terminated ... by compromise or settlement.

422 N.E.2d at 1284.

Thus, we must determine whether the record in this matter reflects that the termination of the fraud action upon which this malicious prosecution action is based left open the merits of the fraud action.

The initial judgment entered on January 9, 1980 in the fraud action recites that the court made a specific finding on the merits of the complaint. However, by minute entry dated March 3, 1980 the trial court found that a copy of the formal judgment had never been received by Attorney Hash before it was signed and was incorrect. Apparently, Attorney Hash had not become aware of the formal judgment until after the filing of the malicious prosecution action. The trial court granted Attorney Hash's motion to correct the formal judgment. The "Corrected Judgment" signed on April 3, 1980 provides in

part:

The Court having considered the motion [to correct the formal written judgment] and having reflected upon its own recollection of the hearing on motion for summary judgment, finds that:

There was a stipulation by counsel for the granting of the summary judgment upon the payment of costs of \$65.00 and that there was no determination of the motion on the merits, and the stipulation indicated that such was not to be done.

The operative portion of the "Corrected Judgment" reads:

IT IS FURTHER ORDERED, in conformity with the said stipulation and agreement of counsel, that the Defendants Jonathan L. Haas and Hiroe Haas have judgment against the Personal Representative of the Estate of Flora Holman, Deceased, in the sum of \$65.00 as and for court costs.

The trial judge in this litigation, who was also the judge to whom the underlying fraud action was assigned, reviewed the record and stated in his minute entry order, dated June 3, 1980:

The record in C 349188 [the fraud action] clearly shows that the final Corrected Judgment was the result of stipulation and negotiation. The thrust of all minute entries, pleadings, document and judgments which followed the initial minute entry of November 16, 1979 is clear that counsel Hash and counsel Postal [former counsel for appellant] entered into an agreement that

Mrs. Yates' Third-Party Complaint against Mr. Haas would be allowed to expire graciously provided that Mr. Haas' court cost of \$65 was paid. While the original judgment signed on January 8, 1980 appears to the contrary, that judgment was subsequently corrected after a motion and hearing on March 3, 1980.

The record in this matter clearly reflects that there was no determination on the merits of the fraud action. By consenting to a termination which left open the question of fraud, appellants failed to obtain a favorable determination. Consequently, appellant could not take advantage of the stipulated judgment in a subsequent court action for malicious prosecution.

Having found that appellant failed to establish an essential element of the claim for malicious prosecution, we find it unnecessary to address appellant's contention that summary judgment should have been entered in his favor.

The judgment of the trial court is affirmed.

/s/ Robert J. Corcoran

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Robert J. Corcoran, Judge

CONCURRING:

/s/ Jack L. Ogg

Jack L. Ogg, Presiding Judge  
Department A

/s/ Donald F. Froeb

Donald F. Froeb  
Judge

IN THE SUPERIOR COURT  
OF  
MARICOPA COUNTY, STATE OF ARIZONA

23    JUNE 3, 1980    HON. STANLEY Z. GOODFARB  
DIV.    DATE    JUDGE OR COMMISSIONER

WILSON D. PALMER Clerk  
E. Schneider Deputy

C-402225

JONATHAN L. HAAS

David R. Postal

vs.

EDGAR HASH, et., et al.

W. Michael Flood  
John A. Michaels

On May 29, 1980 this court took under advisement the Cross-Motions for Summary Judgment filed by both parties in this case. Subsequent to that hearing, the court read the deposition of defendant Edgar Hash and reread all the pleadings contained in C 349188, which case gave rise to the action herein, as it was therein that the alleged wrongful civil proceedings were supposed to have occurred. It is the contention of plaintiff herein that the third-party complaint brought in that action was wilfully, fraudulently and maliciously

brought by the defendant Hash.

Plaintiff's Cross-Motion for Summary Judgment is, of the two motions, the most easily disposed of since there are substantial factual issues which would have to be resolved before liability can be found for plaintiff. The claims of wrongful civil proceedings are vigorously denied and disputed by Mr. Hash in his deposition. His testimony therein clearly raises factual issues of material importance which would prevent summary judgment in favor of the plaintiff.

The defendants also request summary judgment in their favor because the record in C 349188 clearly indicates that there was not a "favorable termination" in behalf of the plaintiff herein, Jonathan L. Haas, in that case. The element of a "favorable termination" for plaintiff in the malicious prosecution action is essential to any action of that type.

Notaros vs. Superior Court, 113 Ariz. 498, 557 P.2d 1059 (1976); Cullison v. City of Peoria,

120 Ariz. 165, 169, 584 P.2d 1156 (1978);  
Bearup v. Bearup, 122 Ariz. 509, 596 P.2d 35  
(Ariz.App. 1969).

All cases seem to be very clear that where the prior proceedings is terminated by a voluntary negotiation, settlement or consent of the parties, as a matter of law, it cannot serve as the needed element of "favorable termination". Even the case cited by plaintiff, Minnasion v. Sapse, 145 Cal.Rptr. 829 foot note 4 (1978) is to the same effect. See also Prosser, "Law of Torts 4th Ed 1971, pages 839, 840, 854; Restatement of Torts SECOND, § 674(b) comment p. 456.

The record in C 349188 clearly shows that the final Corrected Judgment was the result of stipulation and negotiation. The thrust of all minute entries, pleadings, document and judgments which followed the initial minute entry of November 16, 1979 is clear that counsel Hash and counsel Postal entered into an agreement that Mrs. Yates' Third-Party Complaint against Mr. Haas would be allowed to

expire graciously provided that Mr. Haas' court costs of \$65 was paid. While the original judgment signed on January 8, 1980 appears to the contrary, that judgment was subsequently corrected after a motion and hearing on March 3, 1980. That minute entry specifically says:

"...The Court having considered the motion and having reflected upon its own recollection of the hearing on motion for summary judgment, agrees with the motion of the Personal Representative Yates. There was a stipulation for the granting of the summary judgment upon the payment of costs of \$65.00. There was no determination of the motion on the merits, and the stipulation indicated that such was not to be done.

....

There was contained in the judgment a specific finding on the merits which this Court did not do.

....

IT IS ORDERED granting motion of Personal Representative Yates to correct the judgment."

The judgment which the court thereafter entered on April 3, 1980 is also in conformity therewith stating:

"There was a stipulation by counsel for the granting of the summary judgment upon the payment of costs of \$65.00 and that there was no determination of the motion on the merits, and the stipulation indicated that such was

not to be done."

The court finds that the record in C 349188 shows an(sic) negotiated agreement which the court effecutuated. Without more, the initial element for a malicious prosecution action of "favorable termination" is missing and summary judgment in favor of the defendants is required as a matter of law.

IT IS HEREBY ORDERED granting summary judgment in favor of the defendants and against the plaintiffs.

Division 1  
Court of Appeals  
State of Arizona  
Filed SEP 1 1982

Glen D. Clark, Clerk  
By /s/

In The  
Court of Appeals  
State of Arizona  
Division One

JONATHAN L. HAAS,	)	1 CA-CIV 5559
	)	Department A
Plaintiff-Appellant,	)	
	)	
vs.	)	MARICOPA County
	)	Superior Court
EDGAR HASH and ELAINE HASH,	)	No. C-402225
husband and wife, WANDA M.	)	
YATES, Executrix of the	)	
Estate of Flora Holman,	)	<u>O R D E R</u>
deceased,	)	
	)	
Defendants-Appellees.)	)	

The motion for rehearing and response thereto were considered by the court, Presiding Judge Jack L. Ogg and Judges Donald F. Froeb and Robert J. Corcoran participating.

IT IS ORDERED denying the motion for rehearing.

DATED this 1st day of September, 1982.

/s/ Jack L. Ogg

Jack L. Ogg, Presiding Judge  
Department A

A true copy of the foregoing  
order was mailed this 1st  
day of September, 1982, to:

Mr. Jonathan L. Haas  
P.O.Box 7461  
Phoenix, Arizona 85011  
Appellant

Mr. W. Michael Flood  
Jennings Strouss & Salmon  
111 West Monroe Street  
Suite 1700  
Phoenix, Arizona 85003  
Attorneys for Appellees

GLEN D. CLARK, CLERK  
BY

/s/  
DEPUTY CLERK

## SEAL

S. Alan Cook CLERK	Supreme Court STATE OF ARIZONA 202-West Wing CAPITOL BUILDING (602)255-4536 Phoenix 85007	Anna L. Cates CHIEF DEPUTY CLERK
-----------------------	--	--

September 29, 1982

JONATHAN L. HAAS,	)	
Plaintiff-Appellant,	)	Supreme Court No. 16174-PR
vs.	)	
EDGAR HASH and ELAINE HASH Husband and wife, WANDA M.)	)	Court of Appeals No. 1 CA-CIV 5559
YATES, Executrix of the )	)	
Estate of Flora Holman, deceased,	)	Maricopa County No. C-402225
Defendants-Appellees)	)	

---

The following action was taken by the Supreme Court of the State of Arizona on September 28, 1982 in regard to the above-entitled cause:

"ORDERED: Petition for Review = DENIED"

Record returned to the Court of Appeals, Division One, Phoenix, this 29th day of September, 1982.

S. ALAN COOK, Clerk

20a

By /s/ Anna L. Cates  
Chief Deputy Clerk

TO:

Jonathan L. Haas, P.O.Box 7461, Phoenix,  
Arizona 85011

W. Michael Flood, Esq. and John A. Micheals,  
Esq., Jennings, Strouss & Salmon, 111 West  
Monroe, 18th Floor, Phoenix, Arizona 85003

Hon. Stanley Z. Goodfarb, Judge, Maricopa  
County Superior Court, 201 West Jefferson,  
Phoenix, Arizona 85003

Glen D. Clark, Clerk, Court of Appeals,  
Division One, West Wing, State Capitol  
Building, Phoenix, Arizona 85007

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

JONATHAN L. HAAS, ) No. 1 CA-CIV 5559  
vs. Plaintiff-Appellant, )  
vs. ) Maricopa County  
EDGAR HASH and ELAINE HASH, ) Superior Court  
husband and wife; WANDA M. ) No. C 402225  
YATES, Executrix of the )  
Estate of Flora Holman, )  
deceased, )  
Defendants-Appellees.)  
\_\_\_\_\_  
)

Appellant respectfully moves the Court for  
a rehearing because of the following points:

1. The Court erred in their determination  
of favorable termination.
2. The Court gravely erred in their  
determination of the facts surrounding the  
termination of the underlying malicious civil  
action, cause No. C 349188.

RESPECTFULLY SUBMITTED this 11th day of  
August, 1982.

/s/Jonathan L. Haas  
Jonathan L. Haas  
P.O.Box 7461  
Phoenix, Arizona 85011  
277-6001

## MEMORANDUM OF POINTS AND AUTHORITIES

The Court considered the issue of whether a civil action terminated pursuant to negotiations, agreement and stipulation of the parties constitutes a "favorable termination" as is necessary for maintenance of an action for malicious prosecution. The Court reached far afield to justify its conclusion that it does not, while they could have looked next door to California for justification that it does, under some circumstances.

As the Court correctly stated:

"One of the essential elements of a claim for malicious prosecution is that the prior proceedings be terminated in favor of the plaintiff in the malicious prosecution action. Cullison v. City of Peoria, 120 Ariz. 165, 584 P.2d 1156 (1978); Nataros v. Superior Court, 113 Ariz. 498, 557 P.2d 1055 (1976). If the plaintiff in an action for malicious prosecution fails to establish the essential element of a "favorable termination" of the prior proceedings the defendant is entitled to judgment as a matter of law. Hansen v. Stoll, 130 Ariz. 454, 636 P.2d 1236 (App. 1981); Bearup v. Bearup, 122 Ariz. 509, 596 P.2d 35 (App. 1979)." (Slip opinion at p.3)

"Whether a stipulated judgment in a civil proceeding may be deemed a "favorable termination" for purposes of a subsequent malicious prosecution action has not been directly addressed in Arizona case law." (Slip opinion at p. 3)

The Court then views the issue of favorable termination with tunnel vision and concludes that other jurisdictions have held that where the prior proceedings terminate as a result of voluntary negotiations, settlement, or consent of the parties, there has been no such favorable termination, citing Weaver v. Superior Court, 95 Cal.App.3d 166, 156 Cal. Rptr. 745 (1979); Cline v. Flagler Sales Corp. 207 So.2d 709 (Fla.App. 1968); Executive Commercial Services, Ltd. v. Daskalahis, 74 Ill.App.3d 760, 393 N.E.2d 1365 (1979); Miller v. Jamaica Savings Bank, 50 A.D.2d 865, 377 N.Y.S.2d 89(1975); Tower Special Facilities Inc. v. Investment Club, Inc., 104 Wis.2d 221, 311 N.W.2d 225 (App. 1981), as well as two authorities.

Weaver is a California case involving a malicious prosecution action by a doctor against a former patient. The underlying malicious civil action was terminated by the patient dismissing the complaint. The appellant court concluded that the reason for the

dismissal, which would determine if the dismissal constituted a favorable termination, was a triable issue of material fact, and remanded the cause back to the trial court. The court stated, "...any attempt to equate her voluntary dismissal with prejudice to an unfavorable termination as urged by petitioner, is a question of fact for the jury to decide." 156 Cal.Rptr. at 764. Such is the situation with the cause at bar. At a minimum the Court should have remanded for a jury trial.

The Weaver court went on to say:

"Clearly, then, a defense verdict or a dismissal on the merits equates with a favorable termination and thus establishes the first element of a malicious prosecution case. Similarly, a favorable termination arises from a dismissal for failure to prosecute under Code of Civil Procedure section 583, subdivision (a). (Minasian v. Sapse, 80 Cal.App.3d 823, 827[145 Cal.Rptr. 829].) Contrastingly, however, when a dismissal results from negotiation, settlement, or consent, a favorable termination is normally not recognized ..." (emphases added). 156 Cal.Rptr. at 763.

The question the Court should have addressed is under what circumstances is it recognized. And the answer is when the negotiations did not relate to the merits of

the case, but to collateral matters, such as costs, attorney's fees, oral argument and the like.

Cline is a Florida case involving a malicious prosecution action by a vendee against a vendor. The underlying malicious criminal action was terminated by settlement before a justice of the peace, and the court found that such a determination will not support such a charge. Such is not the case at bar, as neither party nor their attorneys appeared before the court to settle the matter.

Executive Commercial Services, Ltd. is an Illinois case involving a landlord--tenant dispute in which a writ ne exeat was issued. The underlying civil action complained of in the malicious prosecution action was the writ ne exeat. The court held that where the original proceedings were not terminated, the vacating of the writ was not a favorable termination. Such is not the case at bar.

Miller is a New York case involving a mortgage foreclosure action. The court held that the cause of action for malicious prosecution did not lie as the foreclosure action of which the plaintiffs complained was discontinued by agreement entered into by both parties to the action. The agreement was in writing. Such is not the case at bar.

Tower Special Facilities, Inc. is a Wisconsin case involving a personal injury action and impleading several third parties, insurance agents, companies and brokers. All parties to this underlying action signed a Stipulation and Order for Dismissal, dismissing all claims without costs to any party. The court found this voluntary compromise and settlement of the underlying suit not to be a favorable termination. Such is not the case at bar.

In the case at bar the question of the facts surrounding the Summary Judgment in favor of Appellant constitutes triable issues of material fact to be decided by a jury.

The Court cites part of a footnote from  
Minasian v. Sapse, 80 Cal.App.3d 823, 827, 145  
Cal.Rptr. 829, 832, n.4 (1978)

"A dismissal resulting from negotiation, settlement, or consent is generally not deemed a favorable termination of the proceedings... In such a case the dismissal reflects ambiguously on the merits of the action as it results from the joint action of the parties, thus leaving open the question of the defendant's guilt or innocence."

The Court overlooks the opinion of the court in the body of the decision and cites only a footnote.

"The theory underlying the requirement of favorable termination is that it tends to indicate the innocence of the accused, and coupled with the other elements of lack of probable cause and malice establishes the tort, that is, the malicious and unfounded charge...against an innocent person. If the accused were actually convicted, the presumption of his guilt or of probable cause for the charge would be so strong as to render wholly improper any action against the instigator of the charge.' (Jaffe v. Stone, 18 Cal. 2d 146, 150, 114 P.2d 335, 338.)

'[I]t is now the well-established rule that a verdict or final determination upon the merits of the malicious civil suit or criminal prosecution complained of is not necessary to the maintenance of an action for malicious prosecution, but that it is sufficient to show tha the former proceeding had been legally terminated.' (Original emphasis.)

(Hurgren v. Union Mutual Life Ins. Co., 141 Cal. 585, 587, 75 P.168; Hudson v. Zumwalt, 64 Cal.App.2d 866, 872, 149 P.2d 457.) Of course where the termination of the former proceeding is not on the merits it is somewhat more difficult to ascertain whether it indicates the innocence of the defendant in the action. Nevertheless, the theory is the same in test-

ing a dismissal or other termination without a trial on the merits. 'If it is of such a nature as to indicate the innocence of the accused, it is a favorable termination sufficient to satisfy the requirement. If, however, the dismissal is on technical grounds, for procedural reasons, or for any other reason not inconsistent with his guilt, it does not constitute a favorable termination.' (Jaffe v. Stone, 18 Cal.2d 146, 150, 114 P.2d 335, 338.)

A dismissal for failure to prosecute...is not a dismissal on technical grounds within the meaning of the Jaffe opinion. (Rest.2d Torts, S 674, com.j; see Williams v. California M.P. Assn., 136 Cal. App. 172, 28 P.2d 59.) Whether or not the termination of an action prior to a determination on the merits tends to indicate innocence on the part of the defendant of the acts with which he is charged must depend on whether the manner of termination reflects on the merits of the matter. In some instances the manner of termination reflects the opinion of the court that the action lacks merit, as where criminal proceedings are dismissed for lack of sufficient evidence of guilt following a preliminary hearing. (Jaffe v. Stone, 18 Cal.2d 146, 114 P.2d 335.) In others, the termination reflects the opinion of the prosecuting party that, if pursued, the action would result in a decision in favor of the defendant, as where the district attorney seeks dismissal of the prosecution of a criminal action for lack of evidence (Jackson v. Beckham, 217 Cal.App.2d 264, 269-270, 31 Cal.Rptr. 739; see Sutherland v. Palme, 93 Cal.App.2d 307 313, 208 P.2d 1035 [insanity proceedings]), or where the plaintiff in a civil proceeding voluntarily dismisses the action (MacDonald v. Joslyn, 275 Cal.App.2d 282, 289, 79 Cal.Rptr. 707; Kennedy v. Byrum, 201 Cal.App.2d 474, 479-480, 20 Cal. Rptr. 98). By way of contrast, a dismissal, say, for lack of jurisdiction (see Ferraris v. Levy, 223 Cal. App.2d 408, 411, 36 Cal.Rptr. 30) not only is not on the merits, it is unreflective of the merits; neither the judgment of the court nor that of the

prosecuting party on the merits is implicated in the dismissal.

A dismissal for failure to prosecute...does reflect on the merits of the action, and that reflection is favorable to the defendant in the action. The reflection arises from the natural assumption that one does not simply abandon a meritorious action once instituted. In Dowling v. Polack, 18 Cal. 625 suit was brought on an injunction bond. The party who had secured the temporary injunction did not appear at the hearing on the merits; on motion of defendants the suit was dismissed. While perhaps not strictly on point the opinion of the court at page 628 is instructive: 'Looking at the matter in the light of principle, it would seem that the failure of the plaintiff to prosecute his suit should be regarded as a concession of his inability to maintain it. The issues are not actually examined and passed upon, but by his failure to appear he virtually confesses that the result of the trial would be to find them against him.' Minasian v. Sapse, supra at 831-832

In the case at bar Appellees Hash did not oppose a Motion for Summary Judgment and agreed to pay costs to Appellant Haas. No written document, not for that matter, any argument, reflects that any discussion was had or agreements made relating to the merits of the case. The termination of the underlying fraud case reflects the opinion of Appellees Hash, that, if pursued, the action would have resulted in favor of Appellant Haas.

The Court then cites a paragraph from Wong v. Tabor, 422 N.E.2d 1279 (Ind.App. 1981). If the Court had read the rest of this case, which is almost identical to the case at bar, they would have concluded that not contesting entry of a summary judgment was considered a favorable termination.

"The evidence reveals that an associate from Tabor's office advised Wong's attorney just prior to the hearing that the Privetts would not contest entry of summary judgment in Wong's favor. However, nothing in the record indicates this conversation involved any compromise or settlement on the part of both parties. While Tabor may have decided to forego his opportunity to contest the summary judgment motion, there is no suggestion this decision was induced by anything more than his choice to do so. There is no evidence the parties had agreed prior to the hearing to terminate the action with entry of summary judgment merely providing the vehicle for securing their agreement. Thus, while Wong benefitted from Tabor's decision, nothing suggests he bargained quid pro quo for such a result.

Compromise and settlement implies something more than one party merely advising another as to his decision with regard to a particular matter in dispute. At a minimum, settlement requires some act or process of adjusting one's differences in reaching an agreement over disputed matters. See, e.g. Black's Law Dictionary 1538-39 (4th Ed.1957). The actions presented here in electing to not oppose summary judgment are reasonably susceptible to interpretation as simply constituting a voluntary withdrawal of the Privetts' claim against Dr. Wong. Voluntary abandonment or discontinuance of the claim would be sufficient to constitute termination

in favor of the defendant. Sasse v. Rogers(1907)40 Ind. App. 197, 81 N.E. 590." Wong, supra at 1284-5.

The opposing counsels in the underlying malicious civil action have both filed sworn affidavits. (R.11n and 110) These are the only sworn testimony of record relating to any negotiations, agreements, stipulation or settlement in the underlying action. Therefore the Court must look to these affidavits to determine the facts. Both Affidavits state that Appellee Hash, as counsel for Wanda Yates (not a party to this action), telephoned David Postal, counsel for Appellant Haas in the underlying action, and informed him "...Yates did not wish to proceed with the litigation..." These facts are uncontested and sworn to by both counsels. This is exactly what happened in Wong above. The plaintiff voluntarily withdrew their claim against Haas. "Voluntary abandonment or discontinuance of the claim would be sufficient to constitute termination in favor of the defendant." Wong, supra at 1285.

The Court in reviewing the record failed to

glean many of the significant facts. In the case at bar the Court can decide the issues of fact as well as law. No oral testimony was presented to the trial court, the matter was determined on the basis of the record, exhibits and affidavits. Although a trial judge is generally in a better position than an appellate court to decide issues of fact, an exception to this rule is where a decision is reached purely on documentary evidence, as is the situation in the case at bar. Goodman's Market, Inc. v. Ward, 4 Ariz.App. 456, 421 P.2d 538 (1966); DeSantis v. Dixon, 72 Ariz. 345, 236 P. 2d 38 (1951). The Court should evaluate the totality of the evidence in reaching its decision.

The facts are accurately set forth in Appellant's Opening Brief, pages 1-9, citing the documentary evidence in the record. These facts establish that Appellee Edgar Hash, as counsel for Yates in the underlying action, knowingly filed a false and fraudulent third party complaint against Appellant Haas. In

that third party complaint the allegations relating to representations concerning a certain mortgage and assignment are boldfaced lies. Appellee Hash did not draw this mortgage and assignment until over a month after he alleges Haas misrepresented them. In their depositions Richard Rowe (deceased) and Hash readily admit this fact. Hash attempted to perpetrate a fraud on the Court by filing a complaint containing known false allegations.

This was done by Appellee Hash to cover up his own negligence or incompetence in failing to obtain adequate security for a deferred payment due from the sale of a piece of real estate from the Estate of Flora Holman, deceased, Wanda Yates personal representative.

In late October or early November, 1979, a motion for summary judgment filed by Haas in the underlying malicious action, was noticed for oral argument. Hash, with over two years of discovery and not one shread of evidence to support his allegations, advised Haas' counsel,

David Postal, that he was not going to oppose Haas' motion for summary judgment. Hash knew this would be a futile effort and tried to salvage paying legal fees, if he could. Hash states in his Affidavit (R 11n) that..."Third Party Plaintiff Yates did not wish to proceed with the litigation..."; Hasj did not offer to settle, negotiate or compromise the action, he only offered to throw in the tower if he could save paying attorney's fees. If Hash thought his client had a meritorious action why was he afraid of paying attorney's fees? Because he was of the opinion that his client's action was without merit.

The trial court granted Appellant Haas's motion for summary judgment and on January 9, 1980, signed the formal judgment. Copies of the formal judgment were sent to the Clerk of the court, Edgar Hash and the original to the Honorable Goodfarb. The trial judge and the clerk acknowledged receiving their copies, as is evidenced by their presence in the record. The Complaint in the action at bar was filed

January 11, 1980, over five weeks after the formal summary judgment was lodged with the court and a copy sent to Hash.

It was well into February, 1980, before Hash notified the trial court that he did not receive a copy of the formal judgment. Although the record established Hash's lack of veracity, the court accepted Hash's word that he did not receive a copy of the formal judgment and that the judgment was in error, while disregarding the testimony of David Postal, counsel for Haas.

The Corrected Judgment in Cause C 349188, the underlying malicious avtion was signed by the trial court judge on April 3, 1980, three months after the complaint in the case at bar was filed. This corrected judgment contains the wording, "...there was no determination of the motion on the merits, and the stipulation indicated that such was not to be done." The members of the appellate court should draw upon their vast numbers of years of experience on

the bench and ask themselves if they have ever seen wording like this in an honest and legitimate judgment.

The fact that the original formal judgment lodged with the court reflected a decision on the merits establishes that Haas did not negotiate a settlement of the action and that Yates, represented by Hash, was simply not opposing the motion for summary judgment.

The statement in the Corrected Judgment that "this determination has now been utilized by the Defendants Haas as the basis for a malicious prosecution action." is quite unusual to say the least. Could it be that the trial judge was over protective of this erring attorney, and that his concern was reflected in the language of the Corrected Judgment?

The Third Party Complaint filed by Hash, as counsel, in the underlying malicious action was an out and out fraud. The games played by the trial judge and Hash in concocting an unfavorable termination of the underlying malicious

action was a travesty of justice. Even the appellate court has shielded this incompetent attorney Hash. If the Courts will not protect the people from incompetent and dishonest attorneys, then to whom shall the people turn?

Appellant moves the Court to remand this cause so that it can be heard before an impartial tribunal. The procedural requirement of a favorable termination rather than a final termination should not be allowed to interfere with Appellant's right to substantive due process.

Respectfully submitted

s/Jonathan L. Haas  
Jonathan L. Haas  
Box 7461  
Phoenix, Arizona 85011  
277-6001

Original and 5 copies of the foregoing hand delivered to the Court of Appeals this 11th day of August, 1982.

Two copies of the foregoing mailed this 11th day of August, 1982, to:

Jefferson L. Lankford  
Jennings, Strouss & Salmon  
111 West Monroe  
Phoenix, Arizona 85003  
By s/ J.L.Haas

DIVISION 1  
COURT OF APPEALS  
STATE OF ARIZONA  
Filed SEP 13 1982  
GLEN D. CLARK, CLERK  
BY /s/

**IN THE COURT OF APPEALS**

**STATE OF ARIZONA**

**DIVISION ONE**

JONATHAN L. HAAS )  
Plaintiff-Appellant, )  
vs. ) 1 CA-CIV 5559  
EDGAR HASH and ELAINE HASH, ) Maricopa County  
husband and wife, ) No. C 402225  
Defendants-Appellees.) PETITION FOR  
REVIEW )

Appellant Petitions the Supreme Court of Arizona to review the decision of the Court of Appeals in this matter. Appellant's motion for rehearing in the Court of Appeals was denied on September 1, 1982.

/s/Jonathan L. Haas  
Jonathan L. Haas  
P.O.Box 7461  
Phoenix, Arizona 85011  
277-6001  
Appellant

Copy of the foregoing mailed this

39a

13th day of September, 1982, to:

Jefferson L. Lankford  
Jannings, Strouss & Salmon  
111 West Monroe  
Phoenix, Arizona 85003

by sig/ J. L. Haas

COURT OF APPEALS  
STATE OF ARIZONA  
Division One

JONATHAN L. HAAS )  
Plaintiff-Appellant, )  
v ) 1 CA-CIV 5559  
EDGAR HASH and ELAINE HASH, ) DEPARTMENT A  
husband and wife, WANDA M. )  
YATES, Executrix of the Es- )  
tate of Flora Holman, deceased, )  
Defendants-Appellees. )  
\_\_\_\_\_  
)

## MANDATE

TO: The Honorable Superior Court for  
MARICOPA County, Arizona, in relation  
to cause No. C 402225.

GREETING: The above cause was presented in your  
Court and was brought before Division  
One of the Court of Appeals of the State of  
Arizona in the manner prescribed by law. This  
Court rendered it memorandum decision and caused  
the same to be filed on the 27th day of July,  
1982.

A petition for review was filed. The  
record was forwarded to the Arizona Supreme  
Court. By order dated the 28th day of September,

1982, the Arizona Supreme Court denied the petition for review, Supreme Court No. 16174-PR.

NOW, THEREFORE, YOU ARE COMMANDED that such proceedings be had in said cause as shall be required to comply with the decision of this Court, a copy of the memorandum decision being attached hereto.

WITNESS, THE HONORABLE JACK L. OGG,  
Presiding Judge, Department A, Division One of  
the Court of Appeals of the State of Arizona,  
on October 6, 1982.

GLEN D CLARK, Clerk  
(SEAL) By

/s/ Glen D. Clark  
Chief Deputy Clerk

Appellees: TAXATION  
Filing Fee.....\$15.00  
Brief ..... 90.00  
TOTAL \$105.00

The original of the foregoing MANDATE and a copy of the memorandum decision of the Court were mailed to the Clerk of the Superior Court for Maricopa County, Arizona on October 6, 1982. A Copy of the MANDATE was mailed on said day to each party appearing or the attorneys of record.

JENNINGS, STROUSS & SALMON  
111 West Monroe  
Phoenix, Arizona 85003  
Telephone (602)262-5911

Attorneys for Defendants Edgar and Elaine Hash

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

JONATHAN L. HAAS,	)	
Plaintiff,	)	No. C402225
vs.	)	JUDGMENT ON
	)	MANDATE
EDGAR HASH and ELAINE HASH,	)	(Assigned to
husband and wife, WANDA M.	)	Judge Good-
YATES, Executrix of the Estate	)	farb, Divi-
of Flora Holman, deceased,	)	sion 20)
Defendants.	)	

---

On June 9, 1980, this Court's judgment was entered ordering that the Defendants Hash have judgment.

Plaintiff prosecuted a timely appeal.

On July 27, 1982, the Court of Appeals, Division One, in JONATHAN L. HAAS, Plaintiff-Appellant, v. EDGAR HASH and ELAINE HASH, husband and wife, WANDA M. YATES, Executrix of the Estate of Flora Holman, deceased, Defendants-Appellees,

1 CA-CIV 5559, Department A, rendered its opinion affirming the judgment of this Court.

Plaintiff made a timely motion for rehearing and a timely petition for review, both of which were denied.

On October 6, 1982, the Court of Appeals transmitted its mandate to this Court, commanding that such proceedings be had as shall be required to comply with its opinion.

Therefore, in accordance with the Opinion and Mandate of the Court of Appeals, Division One, and the Statement of Costs filed in this Court.

IT IS ORDERED, ADJUDGED AND DECREED that the Defendants Hash have judgment in the amount of \$155.25.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Stanley Z. Goodfarb  
Judge of the Superior Court

Copy of the foregoing mailed  
this 12th day of October, 1982 to:

Jonathan L. Haas  
P.O.Box 7461  
Phoenix, Arizpna 85011

and a copy lodged with  
Hon. Stanley Z. Goodfarb  
Judge, Maricopa County  
Superior Court, Division 20  
201 West Jefferson  
Phoenix, Arizona 85003

/s/ W. Michael Flood

## ED THIRKHILL REALTY

"One of Arizona's Largest"

## PURCHASE CONTRACT, RECEIPT and ESCROW INSTRUCTIONS

Escrow No. \_\_\_\_\_ City of: Phoenix, Arizona

Nov. 18, 1974

RECEIVED FROM STATE INVESTMENT CORPORATION, an  
Arizona corporation, or nominee, who will take  
title as (check one)  Community Property  
Estate(husband and wife),  Joint Tenants  
With Right of Survivorship,  Tenants in  
Common,  Sole and Separate, the sum of TWO  
HUNDRED FIFTY and no/100- - - DOLLARS  
(\$250.00- - -) as earnest money and part  
purchase price(accepted subject to collection  
and to be deposited in the broker's trust  
account or with a duly licensed title company)  
for the following described property, situated  
in the County of Maricopa, State of Arizona  
(together with all improvements thereon): Lot  
11, Block 1, PHENICIA, aka 2226 North Dayton,  
Phoenix, including all furniture therein for  
the full purchase price of TWELVE THOUSAND

FIVE HUNDRED and no/100- - - (\$12,500.00--),  
payable as follows:

\$250.00 Earnest money and part purchase  
price , by corporate check payable to Minnesota  
Title.

\$ \_\_\_\_\_ Additional earnest money on or  
before \_\_\_\_\_

\$1,250.00 BALANCE of cash payment to be  
paid on or before close of escrow

\$ \_\_\_\_\_ PRINCIPAL sum remaining unpaid on  
encumbrance of record due to \_\_\_\_\_

\$ \_\_\_\_\_ PRINCIPAL sum remaining unpaid on  
\_\_\_\_\_

\$11,000.00 BALANCE to be evidenced by  
agreement for sale assignment payable at  
\$105.00 or more per month including interest  
at 7½% per annum.

OTHER MATTERS AFFECTING SAID PROPERTY ARE AS  
FOLLOWS:  
\* If Standard Land Title & Trust Agency  
serves as escrow agent, Ed Thirkhill Realty  
will receive in addition to its real estate  
commission, an amount equal to a minimum of

one half (½) of the escrow fund under a percentage lease arrangement between the two companies. This contract is subject to buyer's written acceptance of interior inspections. Buyer shall pay all normal closing costs of buyer and seller, including real estate commission; the balance of the above agreement for sale assignment shall be reduced by this amount. Subject to approval of sale by probate court.

APPROVED 11/20/74 /s/R Rowe

The FHA Amendatory statement is a condition of this contract . The title to all future payments under Agreement for Sale, if any, shall be held by the payees indicated in the following manor (check one):  As community property estate (husband and wife);  As joint tenants with right of survivorship;  As tenants in common;  Sole and Seperate.

10 /s/E.H.

1. On or before December 6, 1974, is hereby specified as date of close of ESCROW AND COMPLIANCE. PRORATION of the following

items indicated by an "X", shall be as of close of Escrow, unless otherwise specified.

/X/ Taxes /X/ Rents / Paving and/or other special Assessments /X/ Irrigation Assessments

/X/ Existing Insurance /X/ Interest

/ Seller to cancel the existing insurance; Purchaser to provide his own in the amount required by the Lender.

Possession shall be delivered upon close of escrow.

ALL payable assessments existing prior to close of escrow are to be paid in full by the Seller; future and proposed by Purchaser unless otherwise specified. Other encumbrances, if any, by Seller unless otherwise specified.

Proration of taxes, paving or other special assessments and irrigation assessments are to be made on a calendar year and 30 day month basis. Taxes to be calculated upon the amount shown on the last available County Treasurer's assessment unless otherwise specified.

2. Purchaser / assumes and agrees to

pay or  takes subject to the encumbrance(s) listed above. The unpaid balance due thereon is approximate. First payment after close of escrow and all subsequent due under existing encumbrances shall be made by Purchaser, all prior by Seller. Any differences shall be reflected in the:  BALANCE OF CASH PAYMENT,  DEFERRED BALANCE,  PURCHASE PRICE. The reserve fund (impoundments), if any, held by Lender in connection therewith is to be refunded to seller.

3. A Bill of Sale will be handed to Escrow Agent for delivery to Purchaser on close of escrow, or as may be specified, if hereafter personal property is to be transferred as part of this transaction.  YES  WAIVED

4. Purchaser and Seller hereby designate

\*Minnesota Title (Dale Hallock) as Title Insurer and Escrow Agent in connection with the sale of the above described property, by Seller to Purchaser upon the terms and conditions set forth above and on the reverse side hereof which shall be complied with by

said parties on or before compliance date shown above or as soon thereafter as possible, unless a demand for cancellation has been made on Escrow Agent as herein provided. Unless otherwise set forth herein, Purchaser and Seller shall each pay one-half (1/2) of the escrow fee and 1/2 mortgage transfer fee, Seller is to pay the title insurance premium, affidavit and the recording fee of any instrumnets necessary to clear title to Purchaser. Purchaser is to pay the recording fee of the vesting instrument and any other recording fees required to satisfy the escrow. All charges as set forth above are in accordance with the prevailing custom unless otherwise specified. All costs of securing new financing to be borne by Purchaser except the discount fee to be paid by the Seller for Federal Government insured Loans, Conventional loan costs by Purchaser unless otherwise specified.

5. Purchaser and Seller agree that the ESCROW NUMBER and designated TITLE COMPANY may

be inserted after execution of this contract by the undersigned and these insertions will not void this contract.

6. This offer shall be accepted by the Seller on or before upon presentation. The Purchaser agrees not to withdraw this offer during said period unless earlier rejected by the Seller. Written notice of acceptance given to the Broker shall be notice to Purchaser.

7. Time is the essence of this contract.

8. THIS CONTRACT IS SUBJECT TO PROVISIONS AND CONDITIONS ON THE REVERSE HEREOF.

ED THIRKHILL REALTY BY /s/J.L.Haas  
PURCHASER State Inv. Corp by \_\_\_\_\_ Address \_\_\_\_\_  
/s/ F. Patterson Address \_\_\_\_\_

#### ACCEPTANCE

I (or we) agree to sell the above described property on the terms and conditions herein stated and agree to pay the above signed Broker as fee the sum of Seven percent of selling price DOLLARS (\$ 7% of S.P.) Or one half (1/2) the deposit in case same is forfeited by the pur-

chaser, provided same shall not exceed the full amount of the fee.

50% to Ed Thirkhill Realty: 50% to Ed Post Rlty (Cammarata) Realty; MLS fees to be deducted from gross commissions.

DATED Nov 20, 19 74

SELLER Estate of Flora Holman, Deceased

SELLER /s/ by Edgar Hash atty for Wanda Yates  
P.R.

Address (Illegible) Phx 85002

Phone 257-0211

SCOTTSDALE (Home Office)  COMMERCIAL DIVISION

4535 N. Scottsdale Rd 4535 N. Scottsdale Rd

Scottsdale - 947-4266 Scottsdale 945-9577

PHOENIX  WEST PHOENIX

4742 N.CENTRAL AVE. 5040 N. 35th AVENUE

Phoenix - 264-4933 Phoenix - 939-1431

TEMPE  MESA

2100 S. Rural RD 615 E.UNIVERSITY DR.

Tempe - 966-6221 Mesa - 964-8788

NORTHWEST PHOENIX  SUN CITY-YOUNGTOWN

3518 W. CACTUS RD 11123 W. NEVADA

Phoenix - 938-6500 Youngtown -977-4233

53a

PARADISE VALLEY  
3226 E. CACTUS RD  
Phoenix - 992-3510

THIS IS A LEGALLY BINDING CONTRACT: IF NOT  
UNDERSTOOD SEEK COMPETENT ADVICE

(Reverse side not reproduced)

STATE OF ARIZONA ) Courtesy Recording  
                    ) Minnesota Title Company  
COUNTY OF MARICOPA) SS No Title Company  
JAN 30 1975 2:45 Liability

I hereby certify that the within instrument was filed and recorded in DOCKET 11016 pg 533-534 and indexed in Mortgages, at the request of

State Investment         Fee No. 20851  
Witness my hand and     Compared  
official seal TOM         Photostated  
FREESTONE County         Fee 2.00  
Recorder PAUL-N-MARSTON

By /s/ Larry Ong Deputy Recorder

When recorded, mail to:  
Title Insurance Co. of Minn.  
700 E. Baseline  
Tempe, Arizona

FOR COLLECTION N) 351,715 NO TITLE LIABILITY

REALTY MORTGAGE

KNOW ALL MEN, That

I, RICHARD ROWE, husband of Barbara A. Rowe of Maricopa County, Arizona, hereinafter referred to as MORTGAGOR, in consideration of NINE THOUSAND NINE HUNDRED NINEY AND 42/100-DOLLARS, in hand paid by STATE INVESTMENT CORPORATION, an Arizona corporation, herein-after referred to as MORTGAGEE, the receipt whereof is hereby acknowledged, does hereby

grant, bargain, sell and convey to MORTGAGEE, and the successors, heirs and assigns of MORTGAGEE forever, the following real estate, lying and being in the County of Maricopa and the State of Arizona, known and described as Lot 4, WILLIAMS PLACE, according to Book 6 of Maps, page 2, records of Maricopa County, Arizona.

Together with all rents, issues and profits thereof and all rights and privileges appurtenant or to become appurtenant to said land, including but not limited to any application for water rights for all or any portion of said lands in the Salt River Project of the United States Reclamation Service, and all the rights to the use of water and ditches for the irrigation of said premises to which MORTGAGOR or said premises are now or may hereafter become entitled, and also together with all the share of, or subscription rights to the capitol stock of the Salt River Valley Water Users Association appurtenant or to become appurtenant to said premises:

TO HAVE AND TO HOLD the above described premises with all the privileges and appurtenances thereunto belonging, including all rents, issues and profits thereof unto MORTGAGEE, and the successors, heirs, executors, administrators or assigns of MORTGAGEE forever. And MORTGAGOR hereby covenants that MORTGAGOR is well and truly seized of a good and perfect title to the premises above conveyed in the law, in fee simple and has good right and lawful authority to convey the same, and that the title so conveyed is clear, fee and unencumbered and that MORTGAGOR will forever warrant and defend the same to MORTGAGEE against all claims whatsoever

PROVIDED ALSWAYS, and these presents are upon this express condition, that if MORTGAGOR shall pay to MORTGAGEE, the just and full sum of NINE THOUSAND NINE HUNDRED NINETY AND 42/100 ---- Dollars, with interest thereon, according to the terms and conditions of that certain promissory note bearing even date herewith executed by R. RICHARD ROWE, husband

of Barbara Rowe and payable to the order of said MORTGAGEE and shall moreover pay to the proper officers all taxes and assessments, general or special, which shall be levied or assessed upon said real estate on or before the date when such taxes or assessments shall have become delinquent and insure and keep insured the buildings on said premises against loss or damage by fire, in the sum of NINE THOUSAND NINE HUNDRED NINETY AND 42/100----- Dollars, in insurance companies to be selected by MORTGAGEE, and the policies of insurance assigned or made payable to MORTGAGEE as interest of MORTGAGEE may appear, and deliver the said policies to the MORTGAGEE, until payment in full of the said promissory note, and interest thereon, then these presents shall be null and void. But in case of the non-payment of any sum of money either principal, interest, taxes, assessments, assessments and dues for irrigation water, power bills, or premiums of insurance, at the time or times when the same shall become due or delinquent

as aforesaid or upon the failure of MORTGAGOR to insure the buildings upon said premises and keep the policies assigned or made payable to MORTGAGEE, and deliver the said policies to the MORTGAGEE agreeable to the conditions of these presents, or of the aforesaid promissory note or any part thereof, or in case of the failure of MORTGAGOR to keep or perform any other agreement, stipulation or condition herein contained, then in such case the whole amount of said principal sum shall be at the option of MORTGAGEE, deemed to have become due and the same, with interest thereon at the rate contracted shall thereupon be collectable in a suit at law or by foreclosure of this mortgage in the same manner as if the whole of said principal sum had been made payable at the time when any such failure shall occur, as aforesaid.

And MORTGAGOR further covenants and agrees that in case of failure on the part of MORTGAGOR to pay any of said taxes, assessments

and dues for irrigation water, power bills, or premiums of insurance, as above provided MORTGAGEE may pay the same and the amount so paid, together with interest thereon at the rate of eight percent per annum shall be a part of the debt secured by this mortgage and a lien on said premises immediately due and payable at the option of MORTGAGEE.

MORTGAGOR also covenants and agrees with MORTGAGEE that MORTGAGOR will, during existence of this mortgage, neither permit nor commit waste on said premises; and will take the same care thereof that a prudent owner would take, and in any action to foreclose this mortgage a receiver shall, upon application of the plaintiff in such action and without notice to the defendants, be appointed by the Court to take charge of said property, to manage, carry on, protect, preserve and repair the same and receive and collect all the rents, issues and profits thereof, and apply the same to the payment of sums spent to protect, preserve and repair said property, the payment of taxes and other

charges, including his own compensation, and to the payment of said note and interest, which may be due or become due during the pendency of the action until sale be finally made and deed made and delivered thereunder; and in case of such foreclosure MORTGAGOR will pay to MORTGAGEE in addition to the taxable costs of the foreclosure suit, a reasonable amount additional as attorney's fee, together with a reasonable fee for title search made in preparation and conduct of such suit, which shall be a lien on said premises and secured by this mortgage; and in case of settlement after suit is brought but before trial, MORTGAGOR agrees to pay a reasonable attorney's fee, as well as all of the cost of such suit and the costs of the appointment of a receiver, if appointed, and any sums expended by such receiver or the MORTGAGEE in the management, carrying on, protection, preservation and repair of said property.

The covenants and agreements herein contained shall inure to the benefit of and be

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binding upon the heirs, executors, administrators successors and assigns of the respective parties hereto.

IN WITNESS WHEREOF, the MORTGAGOR has hereunto set his hand this 22 day of November, 1974.

/s/R. Richard Rowe

State of Arizona )  
 )  
County of Maricopa) ss

On this, the 22 day of November, 1974 before me, J. Moraga the undersigned officer, personally appeared R. Richard Rowe known to me (or satisfactorily proven) to be the person whose name subscribed to the within instrument and acknowledged that he executed the same for the purpose therein contained.

IN WITNESS WHEREOF I hereunto set my hand and official seal.

/s/ J. Moraga

Notary Public  
My Commission Expires 1-12-76

TITLE INSURANCE COMPANY OF MINNESOTA

DKT 1101 PG 747

ASSIGNMENT

State Investment Corporation, an Arizona corporation, herein referred to as Assignor, for and in consideration of \$9,990.42, receipt of which is hereby acknowledged, does hereby assign to Wanda Yates, Personal Representative of Estate of Flora Holman, deceased, through Minnesota Title, Collection No. 251715, that certain mortgage made and executed on the 22nd day of November, 1974, by R. Richard Rowe, husband of Barbara A. Rowe, Mortgagor, to State Investment Corporation, an Arizona corporation, and recorded in the office of the Maricopa County Recorder on the 30th dat of January, 1975 in Docker 11016 at pages 533 and 534 thereof, covering the following described premises, to

wit:            Lot 4, Williams Place

together with the note described in such mortgage, and the money due and to become due thereon with interest; but on the express condition that if Assignor, or its assigns, shall pay or cause to be paid to Assignee, its heirs and assigns the sum of \$9,990.42 in

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monthly payments of \$105.00 per month including interest thereon at the rate of 7 1/2 per cent per annum from December 20, 1974, payable on the first day of each month, this Assignment shall be void; it being made for the sole purpose of securing the payment of such sum of \$9,990.42 with interest thereon as herein specified.

DATED this 20th day of December, 1974.

STATE INVESTMENT CORPORATION

By /s/ R. Richard Rowe

STATE OF ARIZONA      )  
                          )  
County of Maricopa    ) ss.

R. RICHARD ROWE, being first duly sworn, acknowledges that he is the President of State Investment Corporation, an Arizoan Corporation, and that he is duly authorized to execut the above document for the purposes contained therein.

~~EXCLUDED FROM INDEX~~

SUBSCRIBED AND SWORN to before me this  
14th day of February, 1975.

My Commission                /s/ J. Moraga  
Expires: 1-12-76

64a

STATE OF ARIZONA      )  
                        ) ss  
County of Maricopa    )

I hereby certify that the within  
instrument was filed and recorded at  
request of

Edgar Hash

FEB 20, 1975 - 10:25

in Docket 11040

on page 747-748

Witness my hand and official  
seal the day and year aforesaid  
Tom Freestone

County Recorder

By R Brook  
Deputy Recorder

2.00

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JURY FEES  
REMANDS  
SENTENCING

---

IN THE SUPERIOR COURT  
of  
MARICOPA COUNTRY, STATE OF ARIZONA

25              Nov. 16, 1979      HONORABLE STANLEY Z. GOODFARB  
Div              DATE              JUDGE OR COMMISSIONER

WILSON D. PALMER Clerk  
M. Adair              Deputy

---

C 349188

AMERICAN SAVINGS LIFE    Gove L. Allen  
INSURANCE COMPANY              Robert E. Kersting  
vs.  
STATE INVESTMENT              Egar Hash  
COMPANY et al              David R. Postal

This is the time set for hearing  
Defendant, Jonathan L. Haas, Motion for  
Summary Judgment. The Court is advised  
that a stipulation of counsel has been  
reached and no one will appear this date.

Pursuant to said stipulation,  
IT IS ORDERED granting Summary  
Judgment in favor of the Defendants,

66a

Jonathan L. Haas and Hiroe Haas in the sum  
of \$65.00. Counsel for defendants Haas shall  
prepare a Judgment and submit same to the  
Court for signature.

---

---

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Received: JAN 10 1980

Processed: JAN 11 1980 Page 9

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF MARICOPA

AMERICAN SAVINGS LIFE      )  
INSURANCE COMPANY,      )  
Plaintiff,      )  
vs.      ) No. C 349188  
STATE INVESTMENT      ) SUMMARY JUDGMENT  
CORPORATION, et al,      )  
Defendants,      )  
\_\_\_\_\_  
WANDA YATES, Personal      )  
Representative of the      )  
Estate of Flora Holman,      )  
Deceased,      )  
Third Party      )  
Plaintiff,      )  
vs.      )  
JONATHAN L. HAAS and      )  
HIROE HAAS, husband      )  
and wife,      )  
Third Party      )  
Defendants.      )

The Motion of Third Party Defendants HAAS  
for summary judgment filed herein pursuant to  
Rule 56 of the Arizona Rules of Civil  
Procedure, coming for hearing before the Court

on the 16th day of November, 1979, and it appearing to the Court that proper service of said Motion for Summary Judgment was made; and the Court having jurisdiction of the parties to the proceedings and the subject matter; and the Court finding that Defendants HAAS Motion for Summary Judgment should be granted for the reason that there appears to be no genuine issue as to any material fact as between Third Party Plaintiff and Third Party Defendants HAAS and that the Third Party Defendants HAAS are entitled to summary judgment as prayed for in said Motion; and it further appearing there is no just reason for delay in the entry of judgment and that such judgment should enter forthwith.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that Third Party Defendants HAAS Motion for Summary Judgment is granted and that Third Party Plaintiffs action against Third Party Defendants JONATHAN L. HAAS and HIROE HAAS is dismissed with prejudice.

IT IS FURTHER ORDERED, ADJUDGED AND

DECREEED that Third Party Defendants have judgment in the sum of \$65.00 as and for costs, with interest thereon at the rate of 6% per annum from daid (sic) until paid.

DONE IN OPEN COURT this 9th day of January 1980  
~~December, 1979.~~

/s/Stanley Z. Goodfarrb  
Judge of the Superior Court

Copy of the foregoing mailed this 1st day of December, 1979, to:

Clerk of the Superior Court  
201 West Jefferson  
Phoenix, Arizona

The Honorable Stanley Z. Goodfarrb  
Superior Court, Division 25  
201 West Jefferson  
Phoenix, Arizona 85003

Edgar Hash  
637 North 3rd Avenue  
Phoenix, Arizona 85003

/s/ Debra Lyman  
Debra Lyman

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SENTENCING

---

IN THE SUPERIOR COURT  
of  
MARICOPA COUNTY, STATE OF ARIZONA

25 January 9, 1980 HON. STANLEY Z. GOODFARB  
Div DATE JUDGE OR COMMISSIONER

WILSON D. PALMER Clerk  
Emily Martinez Deputy

---

C-349188

AMERICAN SAVINGS LIFE Gove L. Allen  
INSURANCE COMPANY

vs. Robert E. Kersting  
Edgar Hash

STATE INVESTMENT David R. Postal  
CORPORATION, et al

IT IS ORDERED that Third Party  
Defendants Haas Motion for Summary  
Judgment is granted and that Third Party  
Plaintiffs action against Third Party  
Hass is dismissed with prejudice, all in  
accordance with the formal written  
Summary Judgment presented to the Court

71a

and signed January 8, 1980.

FILED:Summary Judgment

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Received: Jan 10 1980

Processed: Jan 11 1980

Page 17

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTRY OF MARICOPA

AMERICAN SAVINGS LIFE ) No. C-349188  
INSURANCE COMPANY )  
vs. ) MOTION TO CORRECT  
STATE INVESTMENT CORPORATION, ) JUDGMENT AND  
et al ) NOTICE  
) (Oral Argument  
                                  ) Requested )

---

NOW COMES EDGAR HASH, attorney for the  
Wanda Yates  
Personal Representative/and moves this Court  
to correct the formal judgment signed by this  
court ostensibly on January 8, 1980 according  
to minute entry of January 9, 1980 from Divi-  
sion 25, and to make judgment conform with  
the minute entry entered by the Honorable  
Stanley Goodfarb on November 16, 1979, pursu-  
ant to Rules of Civil Procedure, Rule 60 and  
Rule 58 and the pleadings in this case. Notice  
is hereby given that this motion will be urged  
at the next regular call of the calander

/s/ Edgar Hash  
EDGAR HASH  
637 North Third Avenue  
Phoenix, Arizona 85003

M E M O R A N D U M

Pursuant to affidavit of EDGAR HASH attached hereto, the court was advised of a stipulation for judgment to be entered for the amount of costs, only, with no reflection as to findings or specific ruling on the merits.

The minute entry states:

"This is the time set for hearing Defendant, Jonathan L. Haas' Motion for Summary Judgment. The Court is advised that a stipulation of counsel has been reached and no one will appear this date.

Pursuant to said stipulation,

IT IS ORDERED granting Summary Judgment in favor of the Defendants, Jonathan L. Haas and Hiroe Haas in the sum of \$65.00. Counsel for defendants Haas shall prepare a Judgment and submit same to the Court for signature."

(See Attached Copy)

Contrary to the minute entry, defendant's counsel prepared a more formal form of a judgment which seems to imply that the court was considering the merits of the case after argument. The only relief granted was for judgment for the defendant and costs, all pursuant to a stipulation as set out in the

minute entry. The form of the judgment did not require lodging under Rule 58(d) since it was for costs and denial of relief. The differences were not noticed until after defendant Haas filed a complaint for malicious prosecution against Third Party Plaintiff's counsel two days following the entry of judgment. Rule 60 clearly allows correction of typographical errors, and the year of entry is incorrect. Rule 60(c) allows relief for mistakes or inadvertance and certainly to require the form of judgment to comply with the minute entry is no more than a technical correction so that the record is complete.

The judgment should be reformed accordingly.

Respectfully submitted,

/s/ Edgar Hasg  
EDGAR HASH

Copy of foregoing mailed this  
5th day of February, 1980, to:

David R. Postal  
3709 W. Marten  
Phoenix, Arizona 85021

A F F I D A V I T

STATE OF ARIZONA )  
                      ) ss.  
County of Maricopa )

EDGAR HASH, being duly sworn upon his oath deposes and says that he is attorney of record in this matter; that following receipt of a minute entry from the court on October 26, 1979 setting hearing on argument of defendant's motion for summary judgment on November 16, he called David Postal, Haas' attorney, and informed him that the Third Party Plaintiff Yates did not wish to proceed with the litigation as Minnesota Title Company had compensated the Estate for the loss caused by the defendant Haas. That Postal, on November 14, 1979, agreed to enter a summary judgment in favor of his client for costs, only, and no attorney fees and that Postal thereafter advised affiant that the costs were as follows, to-wit:

Deposition Per Diem	\$45.00
Clerk's Answer Fee	<u>\$20.00</u>
	\$65.00

That the court was so advised of the stipulation and the minute entry of November 16, 1979 resulted.

That thereafter a formal judgment was presented which differed materially in language from the minute entry, and left an impression that disposition was on the merits after argument. That the form of said judgment was not discovered until this date and that the year on said judgment is incorrect.

/s/ Edgar Hash  
Affiant

SUBSCRIBED AND SWORN to before me this  
5th day of February, 1980.

My Commission Expires: /s/ Suzanna Coat  
July 5, 1983 Notary Public

David R. Postal, Esq.  
Law Offices of Robert W. Holland  
3550 North Central Avenue  
1108 United Bank Building  
Phoenix, Arizona 85012

Attorney for Defendants

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF MARICOPA

AMERICAN SAVINGS LIFE )	
INSURANCE COMPANY, )	
	)
Plaintiff, )	
	)
vs. )	NO. C-349188
	)
STATE INVESTMENT )	RESPONSE TO MOTION TO
CORPORATION, et al, )	CORRECT JUDGMENT AND
	NOTICE
Defendant. )	
	)

JONATHAN HAAS, through his undersigned attorney, hereby opposes the Motion to Correct Judgment and Notice.

/s/ David R. Postal  
DAVID R. POSTAL

MEMORANDUM OF POINTS AND AUTHORITIES

The Judgment prepared for the Court and entered in this matter is totally in compliance with the Court's minute entry and the

motions the Court had before it.

On the 16th of October, 1979, a Motion for Summary Judgment was submitted by DAVID POSTAL, attorney for JONATHAN HAAS. The Motion included a prayer for relief that summary judgment be granted, that the Court award costs, and that the Court award attorneys's(sic) fees to Defendant HAAS.

This Motion was unopposed and the Court set a hearing date of November 16, 1979.

Pursuant to the Affidavit of Counsel attached hereto, Edgar Hash informed David Postal he had no objections to the taking of Summary Judgment based on the authority cited, but would not stand for attorneys fees.

Mr. Hash also indicated that he would allow costs to be assessed against his client in this Summary Judgment.

The minute entry of the Court dated November 16, 1979 accurately reflects that Stipulation, and the Summary Judgment is an entirely proper form of Summary Judgment,

which was mailed to Edgar Hash on the first day of December, 1979.

No objections to the form of Judgment were entered and the Court appropriately entered Judgment on the form presented on January 8, 1980 and filed the same on January 9, 1980.

It is respectfully submitted that if the date is improper on the Judgment that it may be corrected under Rule 60, but that the Affidavit of Edgar Hash does not indicate any mistake, inadvertence, surprise or other reasons for his failure to review the Judgment and state any objections as to the form he may have had.

Furthermore, no where does the Affidavit of Edgar Hash or pleadings moving to correct the Judgment de-neg state where the Summary Judgment actually differs from the minute entry or is otherwise not in conformance with the parties.

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WHEREFORE, if there is any incorrect date on the Summary Judgment as respectfully submitted that the date be corrected, but that the substance of the Summary Judgment as entered by the Court be allowed to stand.

RESPECTFULLY SUBMITTED this 19th day of February, 1980.

/s/ David R. Postal  
DAVID R. POSTAL  
Attorney for Jonathan  
Haas

Copy of the foregoing mailed this  
19th day of February, 1980. to:

Edgar Hash  
637 North Third Avenue  
Phoenix, Arizona 85003

/s/ Lorraine Vesta

A F F I D A V I T

STATE OF ARIZONA      )  
                            )  
County of Maricopa    ) ss.

DAVID R. POSTAL, being first duly sworn  
upon his oath, deposes and says:

I am the attorney of record on this matter;  
that following the receipt of a Minute Entry  
from the Court in October of 1979 setting a  
hearing date for Defendant Haas's Motion for  
Summary Judgment on November 16, 1979 he  
received a call from Edgar Hash, that the  
tenor of the call was that Hash did not wish  
to fight the motion for Summary Judgment if  
Haas would waive attorneys' fees in the matter.

That pursuant to that agreement Postal  
agreed to enter a Summary Judgment on the favor  
of his client for costs without attorneys' fees  
and advised affiant that the costs were \$45.00  
for a deposition and \$20.00 for answering fees,  
for a total of \$65.00.

That the Court was advised of the  
Stipulation and a minute entry of November 16th

resulted.

That a formal Summary Judgment was prepared, the original being mailed to the Honorable Stanly(sic) Z. Goodfarb, with copies to the Clerk of the Court and Edgar Hash on December 1, 1979.

That the Summary Judgment was signed on January 8, 1980 and filed pursuant to the Court's minute entry of January 9, 1980.

/s/David R. Postal  
DAVID R. POSTAL

SUBSCRIBED AND SWORN to before me this  
19th day of February, 1980.

/s/Linda A. Mezyesi  
NOTARY PUBLIC

My Commission Expires:

My Commission Expires Jan. 31, 1983

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SENTENCING

IN THE SUPERIOR COURT  
OF  
MARICOPA COUNTY, STATE OF ARIZONA

25 March 3, 1980 HON. STANLEY Z.GOODFARB  
Div DATE JUDGE OR COMMISSIONER

WILSON D PALMER Clerk  
M. Jelsma Deputy

349188

Gove L. Allen

AMERICAN SAVINGS & LIFE  
INSURANCE COMPANY

Edgar Hash

VS

Robert E.Kersting

STATE INVESTMENT CORPORATION  
ET AL

David R. Postal

This is the time set for hearing on motion of Personal Representative, Wanda Yates, to correct the judgment filed on behalf of Jonathan Haas. Personal Representative is represented by Edgar Hash; Defendant Haas is represented by counsel, David Postal. No

Court Reporter is present.

The Court having considered the motion and having reflected upon its own recollection of the hearing on motion for summary judgment agrees with the motion of the Personal Representative Yates. There was a stipulation for the granting of summary judgment upon the payment of costs of \$65.00. There was no determination on the merits, and the stipulation indicated that such was not to be done. Moreover, the judgment submitted was not lodged under Rule 58(d) even though the judgment was written in a substantially more formal wording than as agreed by the parties or contemplated by the Court.

There was contained in the judgment a specific finding on the merits which this Court did not do. Further, it appears that no copy of the proposed judgment was ever received by counsel, Hash.

This determination has now been utilized by the Defendants Haas as the basis for a

malicious prosecution action.

In order to conform with the stipulation of counsel,

IT IS ORDERED granting motion of Personal Representative Yates to correct the judgment. Counsel Hash will prepare and submit to the Court a corrected judgment in conformity with the Court's order.

---

---

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Received: MAR 4 1980

Processed: MAR 4 1980

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTRY OF MARICOPA

AMERICAN SAVINGS LIFE )  
INSURANCE COMPANY, )  
vs Plaintiff, ) NO.C-349188  
STATE INVESTMENT CORPORATION, ) CORRECTED  
et al Defendants, ) JUDGMENT  
WANDA YATES, Personal Repre- )  
sentative of the Estate of )  
Flora Holman, Deceased )  
vs. Third Party Plaintiff, )  
JONATHAN L. HAAS and HIROE HAAS, )  
husband and wife, )  
Third Party Defendants.)

The motion of Wanda Yates, Personal Representative of the Estate of Flora Holman, to correct the formal written judgment entered herein on January 9, 1980, filed on behalf of Jonathan Haas, having been filed and come on regularly for hearing with counsel for the Personal Representative, Edgar Hash, and counsel for the Defendants Haas, David Postal, present,

and the Court having heard argument by counsel,

The Court, having considered the motion and having reflected upon its own recollection of the hearing on motion for summary judgment, agrees with the motion of the Personal Representative Yates, and finds that:

There was a stipulation by counsel for the granting of the summary judgment upon the payment of costs of \$65.00 and that there was no determination of the motion on the merits, and the stipulation indicated that such was not to be done. Moreover, the judgment submitted was not lodged under Rule 58(d) even though the judgment was written in a substantially more formal wording than as agreed by the parties or contemplated by the Court.

The Court further finds that there was contained in the judgment presented a specific finding on the merits which this Court did not do. Further, it appears that no copy of the proposed judgment was ever received by counsel, Hash.

It further appears that this determination has now been utilized by the Defendants Haas as the basis for a malicious prosecution action.

IT IS, THEREFORE, ORDERED granting the motion of Wanda Yates, Personal Representative of the Estate of Flora Holman, Deceased, for a corrected judgment.

IT IS FURTHER ORDERED setting aside the formal written Judgment heretofore made and entered on January 9, 1980.

IT IS FURTHER ORDERED, in conformity with the said stipulation and agreement of counsel, that the Defendants Jonathan L. Haas and Hiroe Haas have judgment against the Personal Representative of the Estate of Flora Holman, Deceased, in the sum of \$65.00 as and for court costs.

DONE IN OPEN COURT this 3 day of April, 1980.

/s/ Stanley Z. Goodfarb  
Judge

89a

Lodged with the Court this  
20 day of March, 1980.

Copy mailed this 20 day  
of March, 1980, to:

DAVID R. POSTAL  
3550 N. Central - Suite 1108  
Phoenix, Arizona 85012  
Attorney for Third Party Defe

EDGAR HASH

EDGAR HASH  
637 North Third Avenue  
Phoenix, Arizona 85003  
Attorney for Personal Representative  
Wanda Yates, of the Estate of Flora  
Holman, Deceased  
Third Party Plaintiff

David R. Postal  
LAW OFFICES OF ROBERT W. HOLLAND  
3550 North Central Avenue  
Suite 1108  
Phoenix, Arizona 85012  
(602) 264-2712

Attorneys for Third Party Defendants

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

AMERICAN SAVINGS LIFE INSURANCE COMPANY,	)	
Plaintiff,	)	
vs.	)	No. C-349188
STATE INVESTMENT CORPORATION, et al.,	)	OBJECTION TO FORM OF JUDGMENT
Defendants.	)	
<hr/>		
WANDA YATES, Personal Representative of the Estate of Flora Holman, deceased,	)	
Third Party Plaintiffs,	)	
vs.	)	
JONATHAN L. HAAS and HIROE HAAS, husband and wife,	)	
Third Party Defendants.	)	

The purposed corrected Judgment submitted  
to the Court on March 20, 1980 by Edgar Hash,

goes beyond correcting a Judgment to a recitation of facts that is unnecessary.

It is respectfully submitted that the last paragraph is the only one necessary for the corrected Judgment. Furthermore, it is respectfully submitted that this counsel never stipulated to anything other than a summary judgment against defendant Flora Holman(sic) and a dollar judgment of \$65.00 for costs.

Counsel has no problem with the Court exercising whatever languange(sic) it finds objectionable as to the findings of the Court, however, it is respectfully submitted that the stipulation was that summary judgment would not be argued if Haas would waive attorney fees and accept \$65.00 as and for costs.

That the Court finds the original Judgment entered to be beyond that scope is understandable but the proposed corrected Judgment is beyond the scope of correcting a Judgment, and should be limited to correcting a form of Judgment by setting aside the formal

written Judgment made on January 9, 1980 and ordering that Jonathan L. Haas and Hiroe Haas have judgment against the Personal Representative for the Estate of Flora Holman, deceased, that all claims against Haas are dismissed by the Judgment and a Judgment in the sum of \$65.00 as and for Court costs.

Respectfully submitted this 28th day of March, 1980.

LAW OFFICES OF ROBERT W. HOLLAND

By /s/ David R. Postal  
David R. Postal  
Attorneys for Third Party  
Defendants

Copy of the foregoing mailed  
this 28th day of March, 1980, to:

Edgar Hash, Esq.  
637 North Third Avenue  
Phoenix, Arizona 85003  
Attorney for Personal Representative  
Wanda Yates, of the Estate of Flora  
Holman, deceased, Third Party  
Plaintiff

/s/

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IN THE SUPERIOR COURT  
of  
MARICOPA COUNTY, STATE OF ARIZONA

25    April 14, 1980    HON. STANLEY Z. GOODFARB  
Div    DATE                    JUDGE OR COMMISSIONER

WILSON D. PALMER Clerk  
E.Schneider      Deputy

C 349188                    Gove L. Allen

AMERICAN SAVINGS LIFE      Edgar Hash  
INSURANCE

David R. Postal

vs.

STATE INVESTMENT CORP.

The Objection to Form of Judgment filed by the 3rd Party Defendant, Haas, dated March 28, 1980, is granted to the extent that there is struck from the corrected Judgment signed April 3, 1980 the following language:

Page 1, lines 27-28 - "agrees with the motion of the of the(sic) Personal Representative Yates"

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Page 2, line 1 through 11.

The Court makes the corrections on the Judgment in the file, initials the same and the Clerk of the Court is instructed to remicrofilm the Corrected Judgment and show the same as the Judgment appropriate in this case.

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Received: APR 15 1980

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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF MARICOPA

AMERICAN SAVINGS LIFE )  
INSURANCE COMPANY, )  
Plaintiff ) NO.C-349188  
vs )  
STATE INVESTMENT CORPORATION, ) CORRECTED  
et al, ) JUDGMENT  
Defendants, )  
WANDA YATES, Personal Represent- ) (Assigned  
ative of the Estate of Flora ) to Judge  
Holman, Deceased, ) Goodfarb  
Third Party Plaintiff, ) Div 25)  
vs. )  
JONATHAN L. HAAS and HIROE HAAS, )  
husband and wife, )  
Third Party Defendants. )

The motion of Wanda Yates, Personal Representative of the Estate of Flora Holman, to correct the formal written judgment entered herein on January 9, 1980, filed on behalf of Jonathan Haas, having been filed and come on regularly for hearing with counsel for the personal Representative, Edgar Hash, and counsel for the Defendants Haas, David Postal, present

and the Court having heard argument by counsel,

The Court, having considered the motion and having reflected upon its own recollection of the hearing on motion for summary judgment, ~~agrees-with-the-motion-of-the-Personal-Representative-Yates~~, and finds that:

There was a stipulation by counsel for the granting of the summary judgment upon the payment of costs of \$65.00 and that there was no determination of the motion on the merits, and the stipulation indicated that such was not to be done. ~~Moreover-the-judgment-submitted-was-not-ledged-under-Rule-58-(d)-even-though--the-judgment-was-written-in-a-substantially-more-formal-wording-than-as-agreed-by-the-parties-ever-contemplated-by-the-Court--~~

~~The-Court-further-finds-that-there-was-contained-in-the-judgment-presented-a-specific-finding-on-the-merits-which-this-Court-did-not-do--Further,-it-appears-that-no-copy-of-the-proposed-judgment-was-ever-received-by-counsel-Hash-~~

~~It-further-appears-that-this-determination-has-new-been-utilized-by-the-Defendants-Haas-as-the-basis-for-a-malicious-prosecution-action.~~

IT IS, THEREFORE, ORDERED granting the motion of Wanda Yates, Personal Representative of the Estate of Flora Holman, Deceased, for a corrected judgment.

IT IS FURTHER ORDERED setting aside the formal written Judgment heretofore made and entered on January 9, 1980.

IT IS FURTHER ORDERED, in conformity with the said stipulation and agreement of counsel, that the Defendants Jonathan L. Haas and Hiroe Haas have judgment against the Personal Representative of the Estate of Flora Holman, Deceased, in the sum of \$65.00 as and for court costs.

DONE IN OPEN COURT this 3 day of April 1980.

/s/ Stanley Z. Goodfarb

Lodged with the Court this

98a

20 day of March, 1980

Copy mailed this 20 day  
of March 1980, to:

DAVID R. POSTAL  
3550 N. Central - Suite 1108  
Phoenix, Arizona 85011

Attorney for Third Party Defendants

AMERICAN SAVINGS LIFE NO.C-349188  
INSURANCE COMPANY,  
vs CORRECTED  
JUDGMENT

STATE INVESTMENT CORPORATION.  
et al

EDGAR HASH

EDGAR HASH  
637 North Third Avenue  
Phoenix, Arizoan 85002  
Attorney for Personal Representative  
Wanda Yates, of the Estate of Flora  
Holman, Deceased  
Third Party Plaintiff

Law Offices of  
Robert W. Holland  
3550 North Central Avenue, Suite 1108  
Phoenix, Arizona 85012  
Tel.(602) 264-2713

Robert W. Holland  
David R. Postal  
Douglas W. Burns

March 5, 1980

Honorable Judge Goodfarb  
Superior Court Building  
201 West Jefferson  
Phoenix, Arizona 85003

HAND-DELIVERED

Dear Judge Goodfarb:

Lest you think ill of the tactics and measures that I used in the American Savings and Life vs. State Investment matter, I think you should be apprised of the following.

In February of 1978 I received answers to interrogatories from Wanda Yates, the third party plaintiff in this action.

Those answers together with my client's protestation that he had done nothing wrong lead to my digging for the truth in the Complaint.

By June of 1978, I had determined that Mr. Hash had in fact been the one who accepted the offer made, had later gone back and demanded, received, and prepared the instruments for additional security, all outside of the knowledge of my client the third party defendant.

Based on that knowledge I contacted Mr. Hash by telephone, and informed him that I believed his law suit was without basis, that I felt continuation of this matter would result in abuse of process, malicious prosecution action being brought against him, and with my client's permission offered to stipulate a settlement for a mutual stipulation to dismiss the action at that time, no further ramifications on either side.

Mr. Hash rejected out of hand this offer for a stipulated dismissal, and when it was determined that Mr. Rowe was seriously ill, a Notice of his deposition was taken in order to preserve his testimony. Mr. Hash attended the deposition of Mr. Rowe at which time a record pertaining to the transactions between

Mr. Rowe and Mr. Hash was made. Mr. Rowe has subsequently died.

Motion for Summary Judgment in the Yates matter was made in October, 1979, the Court properly setting a hearing date.

At no time did I authorize a Stipulation of Dismissal in this matter, but did stipulate I would not go after attorney's fees and seek only \$65.00 in costs, as my letter of November 13, 1979 to Edgar Hash relating to costs stated.

That Mr. Hash did not receive a copy of my formal judgment seems peculiar, but is not impossible with todays mail.

It is my belief that the form of Summary Judgment entered was entirely proper, but that if the Court deems that on equity Mr. Hash has the right to set aside the judgment then it should be set aside and not changed.

Even the Memorandum of Points and Authorities by Hash indicate that "the only relief granted was for judgment for the defendant and costs. . .". Further, the

minute entry called for a formal written judgment to be prepared and submitted to the Court for signature, contrary to the protestations of Hash that under Rule 58(d) a formal judgment would not be required.

I have not, nor have I attempted to go behind the back of Mr. Hash, having informed him over a year and a half prior to the entry of judgment that my client intended to pursue his legal rights against Yates, and Mr. Hash.

Respectfully submitted,

/s/David R. Postal  
DAVID R. POSTAL

DRP:la  
cc: Edgar Hash  
637 North Third Avenue  
Phoenix, Arizona 85003

DAVID R. POSTAL  
Attorney and Counselor  
4025 NORTH 16th ST.  
SUITE B  
PHOENIX, ARIZONA 85016  
PHONE 602/248-0763

November 13, 1979

Edgar Hash, Esq.

P.O. Box 25278

Phoenix, Arizona 85002

Dear Mr. Hash,

RE: Yates v. Haas

Haas' costs include \$45.00 fee for deposition and a \$20.00 answering fee.

Sincerely,

sig/ David R. Postal

DRP/dl